

The following agencies can answer questions about independent contractor issues.

Maine Department of Labor
P.O. Box 259
Augusta, ME 04332-0259
Tel: (207) 624-6400, Fax: (207) 624-6449
TTY: (800) 794-1110
e-mail: webmaster_bls@state.me.us
web site: <http://www.state.me.us/labor/>

Maine Workers' Compensation Board
Coverage Division
27 State House Station
Augusta, ME 04333-0027
Tel: (207) 287-7066, Fax: (207) 287-7198
TTY: (207) 287-6119
e-mail: Brad.Howard@state.me.us
web site: <http://www.state.me.us/wcb.htm>

Maine Revenue Service
Income/Estate Tax Division
24 State House Station
Augusta, ME 04333
Tel: (207) 626-8475, Fax: (207) 624-9694
TTY: (207) 287-4477
e-mail: withholding_tax@state.me.us
web site: <http://www.state.me.us/revenue>

U.S. Department of Labor
Wage and Hour Division
P.O. Box 554
Portland, ME 04112-0554
Tel: (207) 780-3344 or (207) 945-0330
Fax: (207) 780-3787
e-mail: mcoll@phi.dol-esa.gov
web site: <http://www.dol.gov>

U.S. Internal Revenue Service
SS-8 Unit
SS-8 Coordinator/Site Manager
40 Lakemont Road
Newport, VT 05855
Tel: (802) 334-0252
Fax: (802) 334-5607
e-mail: Gail.Lontine@irs.gov

Disclaimer: This brochure provides brief information and is not a substitute for laws or formal interpretations, which can be obtained from the agencies listed.

Independent Contractors in Maine

Independent Contractor or Employee: Why Does it Matter?

Being classified as an employee or independent contractor affects the taxes you pay and how you pay them. It affects eligibility for unemployment and workers' compensation, Medicare and other benefits and protections. Employers must classify workers either as independent contractors or employees.

What is an Independent Contractor?

In determining independent contractor status, all government agencies consider the amount of direction and control the business has on the worker. In general, if the business supplies training or equipment or tells the workers when and how to do the job, the workers are probably employees. Independent contractors usually use their own tools and work on their own schedule.

That said, there is no single rule or test used by all government agencies. Because they are responsible for a number of different aspects of employment law, agencies use different guidelines to decide whether a worker is an independent contractor or an employee. For example, Internal Revenue Service (IRS) and Maine Revenue Service (MRS) refer to "common law rules." Unemployment Compensation uses the "ABC" test and Workers' Compensation considers other factors. Because agencies have different ways of determining independent contractor status, a business may have to pay unemployment tax and/or carry workers' compensation coverage even if IRS or MRS determines that its workers are independent contractors for income tax purposes.

The guidelines of each agency are too detailed for one brochure. However, it is important to understand how the different laws may affect you. Employers should ask each agency if they consider workers to be employees or independent contractors before the contracted work begins.

If you work as an independent contractor, you:

- Pay your own taxes.
- May not be entitled to unemployment or workers' compensation.
- May not be protected by wage payment and recordkeeping laws, such as minimum wage and overtime.
- Direct and control your work and the work of your employees.

If your business uses independent contractors, you

- Do not withhold taxes or Medicare insurance.
- May have to carry workers' compensation insurance.
- May have to pay unemployment taxes.
- Must ensure that foreign workers are legal and documented.
- Should consult each of the governmental agencies listed in this brochure to find out if they consider your workers to be independent contractors.
- May be liable for back taxes and wages and/or penalties if you misclassify employees as independent contractors.

H

ere are typical questions about independent contractor status:

1. How can I find out how and when I have to pay taxes?

Contact the Internal Revenue Service (IRS), Maine Revenue Service (MRS), and Maine Department of Labor Bureau of Unemployment Compensation (contact information listed on front page).

2. What kind of wage statement should employees get or businesses provide?

Employees receive a W-2 wage statement. Independent contractors receive a 1099-nonwage payment statement. If you're not sure which you should get (or provide), contact the IRS.

3. Should businesses have written contracts with independent contractors?

Written contracts can show the intent of both parties before the beginning of their working relationship. They may be useful in determining independent contractor status. The Workers' Compensation Board requires a written contract to apply for determination of independent contractor status.

4. Can General Contractors put people to work without putting them on the payroll?

If IRS determines the workers are independent contractors, they do not have to be on the payroll for income tax purposes. However, even if IRS determines the workers are independent contractors, another agency may consider them employees. So, employers may have to buy workers' compensation insurance and pay unemployment tax. To avoid paying back taxes and penalties, businesses should contact each agency before workers start a job.

5. How can businesses employ temporary workers from other countries when they are unable to find sufficient U.S. workers?

The Alien Labor Certification program of the Maine Department of Labor provides assistance in the hiring of temporary foreign workers.

6. How can employers learn if they need to purchase workers' compensation insurance?

Contact the Workers' Compensation Board.

7. Do woodlot owners need to purchase workers' compensation insurance for workers who are harvesting trees?

A woodlot owner who gets a "Conclusive Predetermination" from the Workers' Compensation Board or contracts with a wood harvester who has an approved Certificate of Independent Status does not have to carry workers' compensation insurance for that harvester.

8. How do harvesters obtain proof of independent contractor status?

Apply to the Workers' Compensation Board for a Certificate of Independent Status to confirm independent contractor status.

9. What agency investigates wage or overtime issues for employees?

The Maine Department of Labor and the U.S. Department of Labor Wage and Hour Division investigate complaints.

10. What protection do independent contractors have if injured on the job?

Contact the Workers' Compensation Board to learn about rights.

11. Can independent contractors get unemployment compensation?

The Maine Department of Labor, Bureau of Unemployment Compensation will determine coverage.

If you don't know all the responsibilities of being—or contracting with—an independent contractor, find out now so you can make the right decisions and avoid legal and financial problems down the road.